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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/021,434	12/19/2001	Yoshiaki Yokoo	159-69	2082

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EXAMINER

WEIER, ANTHONY J

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 03/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/021,434

Applicant(s)

YOKOO ET AL.

Examiner

Anthony Weier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-24, 27-31 and 34-37 is/are rejected.
- 7) ☒ Claim(s) 25, 26, 32 and 33 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 18-24, 27-31, and 34-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Sasagaw et al.

Sasagaw et al discloses a coffee beverage and process of preparing same wherein said beverage is prepared from coffee extract from coffee beans (a little less than 10% with respect to the final beverage product; see Example 1) with the addition of potassium salt (e.g. potassium carbonate, potassium hydroxide, see col. 3, line 23; e.g. 0.2 %, see col. 4, lines 28-32), and the addition of a milk component (a little less than 10%, e.g. Example 1) wherein same is then heat sterilized (see col. 4, lines 48-59) and having an adjusted pH of 6.8 (see Examples). It should be noted that the potassium salt may be used alone or in combination with other salts (see cols. 2 and 3). In addition, Sasagawa et al does not employ thickener or emulsifier in said beverage (see Examples). In addition, it is considered inherent that the milk employed by Sasagawa et al is cow's milk, particularly since no other milk is referred to and cow's milk is so common. Moreover, the addition of about 40 g of sugar per 1000 g of beverage in Example 1 is considered to be a beverage which has been lightly sweetened,

particularly when compared to Applicants' use of sweetener (see Examples of instant specification).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sasagawa et al.

The claims are rejected for the reasons set forth in paragraph 2 of the Office Action mailed 5/19/04.

Allowable Subject Matter

3. Claims 25, 26, 32, and 33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Reasons for this allowable subject matter were set forth in the last Office Action (mailed 5/19/04).

Response to Arguments

4. Applicant's arguments filed 12/14/05 have been fully considered but they are not persuasive.

Applicant argues that Sasagawa et al does not suggest the use of a strongly basic substance (other than phosphate salts) that prevent precipitates from being formed in a milk-added coffee beverage during or after heat treatment. It should be noted that the drinks being treated in Sasagawa et al addresses the issue of using sodium salts to avoid precipitates but to do so in a way that does not result in a product having a poor taste/slimy feel. Sasagawa et al solves this problem by adding potassium hydroxide or other potassium salts to achieve this (col. 2, lines 13-26) wherein same may be used alone or in conjunction with a sodium salt (col. 2, line 26) and in such manner that the pH is above the range that will create precipitates. Nevertheless, although Sasagawa et al prefers using a phosphate salts alone or in combination with potassium compounds, same is not required. In fact, Sasagawa et al discloses the use of, for example, potassium hydroxide taken alone (see col. 3, line 33) which reads on the instant claims that call for the presence of a strong basic substance other than a phosphate salt.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

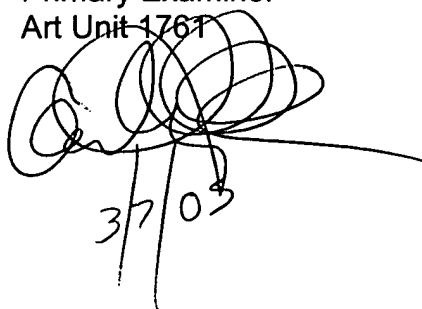
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier

Anthony Weier
Primary Examiner
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March 7, 2005